JOURNAL OF FAMILY LAW

Index
Volume 19
1980-81

University of Louisville
School of Law

ARTICLES BY AUTHOR

ERICKSON, NANCY S. (Preventing Foster Care Placement: Supportive Services in the Home) ..... Page 569

HUBBARD, F. PATRICK ("Contract Cohabitation": A Jurisprudential Perspective on Common Law Judging ... Page 655

ISAACS, STEPHEN L. (The Law of Fertility Regulation in the United States: A 1980 Review) ..... Page 65

MABBUTT, FRED R. (Juveniles, Mental Hospital Commitment and Civil Rights: The Case of *Parham v. J.R.*) ..... Page 27

SCHIFFER, PAULA L. (The New Bankruptcy Reform Act: Its Implications for Family Law) ..... Page 1

STENGER, ROBERT L. (Expanding Constitutional Rights of Illegitimate Children, 1968-1980) ..... Page 407

TROMBETTA, DIANE (Recent Research and Overloaded Courtrooms Inspire New Solutions to Custody Disputes). Page 213

WEINHAUS, SHELLEY (Substantive Rights of the Unwed Father: The Boundaries are Defined) ..... Page 445

WINKS, PATRICIA L. (Divorce Mediation: A Nonadversary Procedure for the No-Fault Divorce) ..... Page 615

LEGAL ESSAYS

CIRILLO, STEPHEN (The Bastard's Cause of Action: A Statutory Cause of Action for Illegitimate Children) .... Page 463

CRUTCHFIELD, CHARLES F. (Nonmarital Relationships and their Impact on the Institution of Marriage and the Traditional Family) ..... Page 247

HANCOCK, EMILY (The Power of the Attorney in Divorce) Page 235
WOLFF, MORRIS H. (The Bastard's Cause of Action: A Statutory Cause of Action for Illegitimate Children) .... Page 463

ARTICLES BY TITLE

"CONTRACT COHABITATION": A JURISPRUDENTIAL PERSPECTIVE ON COMMON LAW JUDGING (*F. Patrick Hubbard and Mary Johnson Larsen*) ..... Page 655
DIVORCE MEDIATION: A NONADVERSARY PROCEDURE FOR THE NO-FAULT DIVORCE (*Patricia L. Winks*) ..... Page 615
EXPANDING CONSTITUTIONAL RIGHTS OF ILLEGITIMATE CHILDREN, 1968-1980 (*Robert L. Stenger*) ..... Page 407
JOINT CUSTODY: RECENT RESEARCH AND OVERLOADED COURTROOMS INSPIRE NEW SOLUTIONS TO CUSTODY DISPUTES (*Diane Trombetta*) ..... Page 213
JUVENILES, MENTAL HOSPITAL COMMITMENT AND CIVIL RIGHTS: THE CASE OF **PARHAM v. J.R.** (*Fred R. Mabbutt*) ..... Page 27
THE LAW OF FERTILITY REGULATION IN THE UNITED STATES: A 1980 REVIEW (*Stephen L. Isaacs*) Page 65
THE NEW BANKRUPTCY REFORM ACT: ITS IMPLICATIONS FOR FAMILY LAW PRACTITIONERS (*Paula L. Schiffer*) ..... Page 1
PREVENTING FOSTER CARE PLACEMENT: SUPPORTIVE SERVICES IN THE HOME (*Nancy S. Erickson*) ..... Page 569
SUBSTANTIVE RIGHTS OF THE UNWED FATHER: THE BOUNDARIES ARE DEFINED (*Shelley Weinhaus*) ... Page 445

LEGAL ESSAYS

THE BASTARD'S CAUSE OF ACTION: A STATUTORY CAUSE OF ACTION FOR ILLEGITIMATE CHILDREN (*Morris H. Wolff and Stephen Cirillo*) ..... Page 463
NONMARITAL RELATIONSHIPS AND THEIR IMPACT ON THE INSTITUTION OF MARRIAGE AND THE TRADITIONAL FAMILY STRUCTURE (*Charles F. Crutchfield*) ..... Page 247
THE POWER OF THE ATTORNEY IN DIVORCE (*Emily Hancock*) ..... Page 235

NOTES

CONJUGAL VISITATION IN AMERICAN PRISONS TODAY ..... Page 313
CONSORTIUM: A SURVEY OF THE PRESENT LAW ..... Page 707
CUSTODY DISPUTES FOLLOWING THE DISSOLUTION OF INTERRACIAL MARRIAGES: BEST INTERESTS OF THE CHILD OR JUDICIAL RACISM? ..... Page 97
DIVORCE KIT DILEMMA: FINDING THE PUBLIC INTEREST ..... Page 729
THE FEDERAL YOUTH CORRECTIONS ACT: FLAWS IN EQUAL PROTECTION ANALYSIS ..... Page 295
MALPRACTICE COMES TO DIVORCE COURT: **SMITH v. LEWIS** AND CURRENT STANDARDS OF CARE ..... Page 263
THE NATURE OF PATERNITY ACTIONS ..... Page 475
THE RIGHT TO APPOINTED COUNSEL IN PATERNITY ACTIONS ..... Page 497

BOOK REVIEWS

RAMSEY, Ethics at the Edge of Life (Reviewed by Jonathan Brant) ..... Page 137
STRAUS, GELLES, and STEINMETZ, Behind Closed Doors: Violence in the American Family (Reviewed by Geoffrey W. Hoon) ..... Page 331
WHEELER, Divided Children—A Legal Guide for Divorcing Parents (Reviewed by Geoffrey W. Hoon) ..... Page 145

SUBJECT INDEX

ABORTION

CASE NOTES

Strict limitations on federal Medicaid reimbursements for abortions imposed by the Hyde Amendment held permissible. Participating states held not obligated to fund medically necessary abortions not federally funded. *Harris v. McRae*, 100 S. Ct. 2671 (1980). ..... Page 335

Legislation restricting access to abortion services during first trimester must meet strict scrutiny test and may not unreasonably confine or burden aborting physician's practice. Restrictions must be based on medical necessity and will be voided if not narrowly tailored to meet needs asserted or supported by medical necessity. *Charles v. Carey*, 627 F.2d 772 (7th Cir. 1980). ..... Page 745

In an action seeking declaratory and injunctive relief, several provisions of the 1979 Missouri statute regulating abortions were found unconstitutional. *Planned Parenthood Association of Kansas City v. Ashcroft*, 483 F. Supp. 679 (W.D. Mo. 1980). ..... Page 342

State statute requiring both parental consent and court order for unmarried minors seeking abortions and spousal notice and consultation for married women seeking abortions held unconstitutional. *Scheinberg v. Smith*, 482 F. Supp. 529 (S.D. Fla. 1979). ..... Page 149

ADOPTION

In a hearing to revoke consent, the use of a presumption in favor of biological parent is improper; the primary consideration is the best interests of the child. *In re Adoption of R.P.R.*, 95 Wis. 2d 573, 291 N.W.2d 591 (Ct. App. 1980). ..... Page 350

ATTORNEYS

LEGAL ESSAY

The Power of the Attorney in Divorce (*Emily Hancock*) .... Page 235

NOTE

Malpractice Comes to Divorce Court: *Smith v. Lewis* and Current Standards of Care ..... Page 263

BANKRUPTCY

ARTICLE

The New Bankruptcy Reform Act: Its Implications for Family Law Practitioners (*Paula L. Schiffer*) ..... Page 1

CHILD DEPENDENCY

CASE NOTE

Indigent parents have fundamental right to counsel in child dependency proceedings upon service of petition or seizure of child. *Davis v. Page*, 618 F.2d 374 (5th Cir. 1980). ... Page 354

CONSORTIUM

NOTE

Consortium: A Survey of the Present Law ..... Page 707

CASE NOTES

Proof of a legal marriage is not an essential element of consortium claim. Cohabitant may have standing to bring action for loss of consortium. *Bulloch v. United States*, 487 F. Supp. 1078 (D.N.J. 1980). ..... Page 517

Children may recover for loss of companionship and society of father injured through negligence of his employer. Although wife and children of injured employee did not witness his injury, their claim for mental anguish and impaired health is sufficient to withstand motion for summary judgment. Employee's acceptance of workman's compensation does not bar such claims by his wife and children. *Ferriter v. Daniel O'Connell's Sons, Inc.*, — Mass. —, 413 N.E.2d 690 (1980). ..... Page 750

CONSTITUTIONAL LAW

ARTICLES

Expanding Constitutional Rights of Illegitimate Children, 1968-80 (*Robert L. Stenger*) ..... Page 407

Juveniles, Mental Hospital Commitment and Civil Rights: The Case of *Parham v. J.R. (Fred R. Mabbutt)* ..... Page 27

The Law of Fertility Regulation in the United States: A 1980 Review (*Stephen L. Isaacs*) ..... Page 65

Substantive Rights of the Unwed Father: The Boundaries are Defined (*Shelley Weinhaus*) ..... Page 445

NOTES

The Federal Youth Corrections Act: Flaws in Equal Protection Analysis ..... Page 295
The Nature of Paternity Actions ..... Page 475
The Right to Counsel in Paternity Actions ..... Page 497

CASE NOTES

Strict limitations on federal Medicaid reimbursements for abortions imposed by the Hyde Amendment held permissible. Participating states held not obligated to fund medically necessary abortions not federally funded. *Harris v. McRae*, 100 S. Ct. 2671 (1980)..... Page 335
New York statute authorizing use of public funds to reimburse church-sponsored and secular nonpublic schools for performing various state-mandated testing and reporting services held not violative of first and fourteenth amendments. *Committee for Public Education and Religious Liberty v. Regan*, 100 S. Ct. 840 (1980). ..... Page 153
Statute of limitations barred father's action for violation of constitutional rights when children were concealed from him, where concealment occurred with consent of mother in order to protect children from risk of harm when mother's second husband testified against organized crime figures. Children had no claim for abduction or false imprisonment. *Leonhard v. United States*, 633 F.2d 599 (2d Cir. 1980)..... Page 760
Recipient state's policy setting limit of 180 days per year for state funded instruction held violative of Education for All Handicapped Children Act, 42 U.S.C. §§ 1401-1420 (1976). *Battle v. Pennsylvania*, 629 F.2d 269 (3rd Cir. 1980). ..... Page 757
Husband, as guardian of comatose wife, has standing to assert her constitutional right to refuse medical care; chancery court has the power to authorize removal of life-sustaining systems if evidence warrants. *Severns v. Wilmington Medical Center, Inc.*, 421 A.2d 1334 (Del. 1980)..... Page 769
State's general interest in preservation of life held insufficient to warrant judicial intervention in temporary guardian's decision to terminate life-sustaining medical treatment of terminally ill, mentally incompetent ward. *In Matter of Spring*, ___Mass. App. ___, 399 N.E.2d 493 (1979)..... Page 158

Statutes requiring parents who are able to support their profoundly retarded, school age, institutionalized children to pay for their care in state institutions does not violate the United States or New Jersey Constitutions. However, such parents may be entitled to financial relief under federal or state statutes. *Levine v. State Department of Institutions & Agencies*, 84 N.J. 234, 418 A.2d 229 (1980). Page 520

Terminally ill, comatose patient held free to exercise common law and fourteenth amendment rights to withdraw from life-sustaining respirator. *Eichner v. Dillon*, 73 A.D.2d 431, 426 N.Y.S.2d 517 (1980). Page 358

State court adjudication of a custody dispute where the child and one parent are residents of the state, held not violative of due process provided that the nonresident parent is given notice and an opportunity to be heard, even though the nonresident parent does not have the "minimum contacts" with the forum needed to impose a judgment of support. *Perry v. Ponder*, 604 S.W.2d 306 (Tex. App. 1980). Page 765

CRIMINAL LAW—JUVENILES

CASE NOTE

A court may direct incarceration in a juvenile proceeding if facts upon the record would lead a reasonable court to conclude either that no less restrictive alternative would accomplish the requisite rehabilitation of the child or that the public welfare requires incarceration. *State ex rel. D.D.H. v. Dostert*, ___W. Va. ___, 269 S.E.2d 401 (1980). Page 525

CUSTODY

ARTICLE

Joint Custody: Recent Research and Overloaded Courtrooms Inspire New Solutions to Custody Disputes (*Diane Trombetta*) Page 213

NOTE

Custody Disputes Following the Dissolution of Interracial Marriages: Best Interests of the Child or Judicial Racism? Page 97

CASE NOTE

Termination of parental rights under state statute requires clear and unequivocal showing that child's physical or mental health or social or educational well-being is in jeopardy through abuse or neglect by parent. *DS v. Dept. of Public Assistance and Social Services*, 607 P.2d 911 (Wyo. 1980). ..... Page 163

DIVORCE

ARTICLE

Divorce Mediation: A Nonadversary Procedure for the No-Fault Divorce (*Patricia L. Winks*) ..... Page 615

NOTE

Divorce Kit Dilemma: Finding the Public Interest ..... Page 729

FOSTER CARE

ARTICLE

Preventing Foster Care Placement: Supportive Services in the Home (*Nancy S. Erickson*) ..... Page 569

ILLEGITIMATE CHILDREN

ARTICLE

Expanding Constitutional Rights of Illegitimate Children, 1968-1980 (*Robert L. Stenger*) ..... Page 407

LEGAL ESSAY

The Bastard's Cause of Action: A Statutory Cause of Action for Illegitimate Children (*Morris H. Wolff and Stephen Cirillo*) ..... Page 463

CASE NOTES

The illegitimate children of a deceased federal civil service employee are entitled to survivors' benefits under the Civil Service Retirement Act where the employee and children had once lived together as family though not at time of employee's death. *United States v. Clark*, 100 S. Ct. 895 (1980). ..... Page 166

Trial court did not abuse discretion by ordering illegitimate child's name changed to that of the father, despite mother's opposition, where father acknowledged paternity, helped support the child, was not guilty of wrongdoing and requested the change. *D.R.S. v. R.S.H.*, ___ Ind. App. ___, 412 N.E.2d 1257 (1980). ..... Page 773

MEDICAID

CASE NOTE

In determining Medicaid eligibility and extent of assistance for an institutionalized spouse, state may take into account income "reasonably evaluated" to be "available" from the other spouse. HEW regulation limiting state to consideration of income "actually contributed" by such spouse is inconsistent with Medicaid statute and invalid. State may consider Social Security, Railroad Retirement and Civil Service retirement income in making such reasonable evaluations. *Herweg v. Ray*, 619 F.2d 1265 (8th Cir. 1980). ..... Page 528

MENTAL HEALTH

ARTICLE

Juveniles, Mental Hospital Commitment and Civil Rights: The case of *Parham v. J.R.* (*Fred R. Mabbutt*). ..... Page 27

PARENT-CHILD

CASE NOTE

Parents who attempt to extricate their adult child from a religious cult are not liable for false imprisonment when acting under a conviction that the judgmental capacity of that child is impaired and child assents to the parents' actions. *Peterson v. Sorlien*, ___ Minn. ___, 299 N.W.2d 123 (1980) ..... Page 778

PATERNITY

ARTICLE

Substantive Rights of the Unwed Father: The Boundaries are Defined (*Shelley Weinhaus*) ..... Page 445

NOTES

The Nature of Paternity Actions ..... Page 475
The Right to Counsel in Paternity Actions ..... Page 497

PENSIONS

CASE NOTES

Wife had no community property interest in survivorship benefits under former husband's private sector pension plan, since plan was not in existence during marriage. *United Association of Journeymen and Apprentices v. Myers*, 488 F. Supp. 704 (M.D. La. 1980)..... Page 536
Military retirement benefits held subject to California community property law. *In re Marriage of Milhan*, 27 Cal. 3d 765, 613 P.2d 812, 166 Cal. Rptr. 533 (1980)..... Page 539

PRISONERS

NOTE

Conjugal Visitation in American Prisons Today..... Page 313

PRIVILEGE

CASE NOTE

Apart from confidential communications, a witness spouse alone has the privilege to testify adversely and may be neither compelled to testify nor foreclosed from testifying. *Trammel v. United States*, 100 S. Ct. 906 (1980)..... Page 171

SCHOOLS

CASE NOTE

Preventing male student from bringing male date to high school prom amounts to abridgement of first amendment rights. School did not choose least restrictive means of achieving legitimate state goal of preventing anticipated violence. *Fricke v. Lynch*, 491 F. Supp. 381 (D.R.I. 1980). Page 541

SEXUAL BEHAVIOR

LEGAL ESSAY

Nonmarital Relationships and their Impact on the Institution of Marriage and the Traditional Family Structure (Charles F. Crutchfield) ..... Page 247

SOCIAL SECURITY

CASE NOTE

State law requiring state-administered assistance recipients to agree to reimburse state for assistance received while the recipient was awaiting Supplemental Security Income benefits held contradictory of neither Social Security Act nor principle of federal supremacy. *Moore v. Colautti*, 483 F. Supp. 357 (E.D. Penn. 1979)..... Page 175

TAXATION

CASE NOTE

Section 2036(a)(1) of the Internal Revenue Code, involving transfers of property with a retained life estate, does not necessarily render some portion of a transfer between spouses includable in the donor's gross estate under Texas community property law. *Wyly v. Commissioner*, 610 F.2d 1282 (5th Cir. 1980)..... Page 179

TORT

CASE NOTE

An injured plaintiff may maintain an action for damages against a substantial percentage of the manufacturers of diethylstilbestrol (DES) even though she is unable to identify the particular manufacturer of the drug her mother ingested. Damages are to be apportioned according to the approximate market share of each manufacturer at the time the mother ingested DES. *Sindell v. Abbott Laboratories*, 26 Cal. 3d 588, 607 P.2d 924, 163 Cal. Rptr. 132 (1980)..... Page 544

WRONGFUL LIFE

CASE NOTE

A child born with Tay-Sachs disease has a cause of action in tort, where a genetic testing laboratory fails to inform its prospective parents of their status as carriers of Tay-Sachs genes. *Curlender v. Bio-Science Laboratories*, 106 Cal. App. 3d 811, 165 Cal. Rptr. 477 (1980)..... Page 363